IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.784 OF 2006

M/s. Valtech Industries ..Petitioner.

Vs.

M/s. Patel Roadways Ltd. ..Respondent.

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Mr. Suraj D. Wasukar for the Petitioner.
Ms. Shilpa Kapil for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

23rd March, 2007.

P.C. :

The claim in the Company Petition arises out of an alleged short delivery/ damage to goods which were entrusted to the company for transportation. In the reply, the company has disputed its liability and it has been submitted that the consignment was booked on 19th April, 2005 by the Petitioner for delivery to Hindustan Petroleum Corporation Limited. No freight was paid at the time of booking since the consignment was sent on FOD (Freight On Delivery) basis. The consignment was delivered on 27th April, 2005 and the defence is that until 26th May, 2005 when the consignee addressed a letter to the Petitioner, there were no complaints in regard to the delivery either by the Petitioner

or the consignee. At the time of the delivery, it is alleged that the consignee in fact paid the freight and accepted the delivery without protest. Having regard to the disputed nature of the claim, it cannot be said that a debt is due and payable. Under Section 8 of the Carriers Act of 1865 the liability of the common carrier is conditioned either on negligence or a criminal act of his agent or servant. Under Section 9 the burden of proof does not lie upon the Plaintiff. The provision in regard to the burden of proof, however, does not detract from the fact that it is upon negligence or a criminal act being established that a carrier is liable. In the present case, the carrier having been disputed the liability, the Petitioner would have to be relegated to the remedy of filing either a suit or instituting proceedings before the appropriate forum. The Company Petition is accordingly dismissed.